



SEP 14 2004

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PETITION OF INDIANA-AMERICAN)
WATER COMPANY, INC. FOR)
AUTHORITY TO INCREASE ITS RATES)
AND CHARGES FOR WATER AND SEWER)
SERVICE AND FOR APPROVAL OF NEW)
SCHEDULES OF RATES AND CHARGES)
APPLICABLE THERETO)

CAUSE NO. 42520

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

On June 16, 2004, pursuant to the post-hearing procedural schedule established in this Cause, Indiana-American Water Company, Inc. ("Petitioner") filed its *Reply to Proposed Orders and Exceptions Submitted by OUCC and Intervenors* ("Reply"). On June 25, 2004, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its *Motion to Strike* certain portions of the Petitioner's Reply. Petitioner responded to the *Motion to Strike* on July 2, 2004, and the OUCC filed its reply to Petitioner's response on July 9, 2004.

Since the subject of this Cause is Petitioner's request for a rate increase, Petitioner has the burden of proof and is entitled to the last word in both the presentation of evidence and argument. The post-hearing Reply was Petitioner's scheduled opportunity to have the last word in arguing the content of the parties' proposed orders. Therefore, we are not inclined to strike any of Petitioner's Reply, except to the extent an argument is clearly outside the bounds of responsible advocacy. Petitioner and the OUCC have both been vigorous advocates of their often divergent positions in this proceeding.

There is one part of Petitioner's Reply that we find should be stricken and will not be considered: the June 15, 2004 article and graph from the *Wall Street Journal* (Appendix C) and the argument regarding Appendix C on pages 18 and 19 of the Reply. The Evidentiary Hearing in this Cause was adjourned on April 21, 2004. Therefore, this information from the *Wall Street Journal* is not, and could not have been, part of the evidentiary record in this Cause. The remainder of the OUCC's *Motion to Strike* is denied.

Petitioner's only justification for including this extra-record information is the assertion that the OUCC attempted to rely upon information published in the *Wall Street Journal* subsequent to the close of the record in a prior rate case involving Petitioner. Petitioner should consider the adage: "Two wrongs do not make a right."

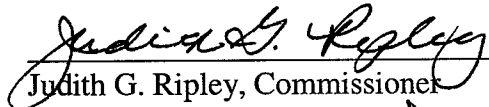
On September 1, 2004, the OUCC filed its *Verified Motion to Re-Open the Proceeding to Take Additional Evidence* ("Motion to Re-Open"), stating that if we were to

consider the Reply's Appendix C and related argument as proper evidence, then we should re-open the record to admit into evidence a September 1, 2004 *Wall Street Journal* article that the OUCC asserts is responsive to the Reply's Appendix C. Petitioner responded to the Motion to Re-Open on September 13, 2004.


Unfortunately, the OUCC did not wait for a ruling on its Motion to Re-Open, but chose to attach its claimed newly-discovered, responsive evidence to its motion, thereby establishing improper post-hearing parity with Petitioner. The OUCC should also consider the above adage.

The relief sought in the Motion to Re-Open is mooted by our action with respect to the *Motion to Strike*. The *Wall Street Journal* article filed along with the OUCC's Motion to Re-Open is outside the record of evidence in this Cause. The Presiding Officers will not consider any information outside the record of evidence. Therefore, the *Wall Street Journal* article attached to the OUCC's Motion to Re-Open and reference to said article in the Motion to Re-open are, on the Presiding Officers' own motion, stricken and will not be considered.

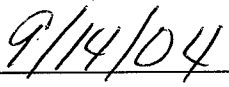
IT IS SO ORDERED.



Judith G. Ripley, Commissioner



William G. Divine, Administrative Law Judge



Date